

# FRAGILE, CONFLICT-AFFECTED, AND EMERGENCY SITUATIONS

## GUIDANCE NOTE ON PROCUREMENT

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JUNE 2018

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## ABOUT THIS PUBLICATION

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In April 2017, the Asian Development Bank (ADB) approved its new procurement framework, the ADB Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time); and the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time). These replace the former Guidelines on the Use of Consultants (2013, as amended from time to time) and Procurement Guidelines (2015, as amended from time to time). The procurement policy and the procurement regulations address the procurement activities of project executing agencies and implementing agencies on projects financed in whole or in part by a loan or grant from ADB, or by ADB-administered funds. ADB designed the 2017 procurement policy to deliver significant benefits and flexibility throughout the project procurement cycle, as well as to improve project delivery through a renewed focus on the concepts of quality, value for money (VFM), and fitness for purpose.

This note is part of a series of guidance notes published by ADB in 2018 to accompany the 2017 procurement policy and the procurement regulations. Each note discusses a topical issue for borrowers (including grant recipients), bidders, and civil society under the new framework (see list below). The guidance notes cross-reference each other frequently and should be read in conjunction. All references to “guidance notes” pertain to these notes. The notes may be updated, replaced, or withdrawn from time to time.



### List of Guidance Notes for the 2017 ADB Procurement Policy and the Procurement Regulations

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|--|--|
| 1. Value for Money                                       | 14. High-Level Technology                                |
| 2. Procurement Risk Framework                            | 15. Quality  |
| 3. Strategic Procurement Planning                        | 16. Bidding-Related Complaints                           |
| 4. Procurement Review                                    | 17. Noncompliance in Procurement                         |
| 5. Alternative Procurement Arrangements                  | 18. Standstill Period                                    |
| 6. Open Competitive Bidding                              | 19. State-Owned Enterprises                              |
| 7. Price Adjustment                                      | 20. E-Procurement  |
| 8. Abnormally Low Bids                                   | 21. Framework Agreements for Consulting Services         |
| 9. Domestic Preference                                   | 22. Public-Private Partnerships                          |
| 10. Prequalification                                     | 23. Contract Management                                  |
| 11. Subcontracting                                       | 24. Fragile, Conflict-Affected, and Emergency Situations |
| 12. Consulting Services Administered by ADB Borrowers    |  |
| 13. Nonconsulting Services Administered by ADB Borrowers |  |
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ADB procurement reforms intend to ensure VFM by improving flexibility, quality, and efficiency throughout the procurement cycle (see illustration below and the *Guidance Note on Value for Money*). VFM is part of a holistic procurement structure with three support pillars: efficiency, quality, and flexibility. The two key principles of transparency and fairness weave across all elements of the structure.



**Time**

Time is an important element of VFM. When a project is delivered promptly or when a process is completed rapidly, greater value is created for all stakeholders. For example, a road project completed early provides economic benefit, security, or other value to the community it serves. It increases the return on investment to the executing agency and accelerates the project and payment cycle to the successful bidder. Likewise, a project delivered late loses significant value.

When considering VFM in the context of procurement, pay attention to anything that (i) shortens the procurement cycle time frame or (ii) accelerates delivery of the development project.



## Objective

This guidance note is intended to assist readers by elaborating on and explaining ADB's 2017 procurement policy and procurement regulations for borrowers (including grant recipients).

This note identifies additional information for the reader to consider when applying ADB's procurement policy and procurement regulations to their circumstances.



## Living Document

This guidance note is intended to be a living document and will be revised as required.

Be sure to check the ADB Business Center website for the latest version and updates, <https://www.adb.org/business/main>.



## The Reader

In many circumstances, readers are expected to use this guidance note in a manner unique to their needs. For consistency throughout the suite of guidance notes, the following assumption is made about the reader:

The reader is a professional involved in activities financed in whole or in part by an ADB loan or grant, or by ADB-administered funds.



## FAQs

Frequently asked questions, clarifications, examples, additional information, links to training, and other useful resources will be made available on the ADB website.

Be sure to check the ADB Business Center website for more information, <https://www.adb.org/business/main>.



## Legal and Order of Priority

This guidance note explains and elaborates on the provisions of the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) applicable to executing (and implementing) agencies under sovereign (including subsovereign) projects financed in whole or in part by an investment loan from ADB (i.e., excluding ADB results- or policy-based loans), ADB-financed grant (excluding ADB-administered technical assistance and staff consultancies), or by ADB-administered funds.

In the event of any discrepancy between this guidance note and the procurement regulations, the latter will prevail. The financing agreement governs the legal relationships between the borrower and ADB. The rights and obligations between the borrower and the provider of goods, works, or services are governed by the specific procurement document issued by the borrower and by the contract signed between the borrower and the provider, and not by this guidance note.



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# ABBREVIATIONS

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ADB	—	Asian Development Bank
CSO	—	civil society organization
FCAS	—	fragile and conflict-affected situation
NGO	—	nongovernment organization
OAI	—	Office of Anticorruption and Integrity
PAM	—	project administration manual
PPRR	—	project procurement-related review
RFQ	—	request for quotations
UN	—	United Nations
VFM	—	value for money

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## EXECUTIVE SUMMARY

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By any standard, operating in fragile and conflict-affected situations (FCAS), as much as in the context of an emergency, carries enormous challenges. The nature and capacity of local industries, the capacity of local public administrations, and the usual stringent requirements imposed on contractors, suppliers, and service providers, all require careful adjustments for procurement to be efficient.

ADB's 2017 procurement policy provides the opportunity to differentiate procurement approaches according to country conditions and to avoid a "one size fits all" approach. Therefore, this guidance note offers procurement practitioners on projects financed in whole or in part by an ADB loan or grant, or by ADB-administered funds, practical measures to enable them to adapt procurement requirements in FCAS and emergencies in response to different situations.

Some of these measures include:

### **At the project design and procurement planning stage:**

- Increased flexibility in the design of procurement arrangements, with more flexible packaging arrangements and use of national procedures,
- Allowance for the initiation of projects before the completion of full procurement planning,
- Increased flexibility in the use of open competitive bidding with national advertising,
- Increased flexibility of prior and post review (sampling) practices, and
- Increased flexibility in the use of direct selection, particularly in emergency situations.

### **In the processing of procurement transactions:**

- Use of procurement agents or other entities to support implementation,
- Availability of ADB support to assist with start-up processing of consultant selection,
- Flexibility to expand or adjust existing contracts rather than create new ones,
- Lower minimum bidder qualification requirements,
- Lower performance security or advance payment security requirements, and
- Increased allowance for advance payments.



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# I. Introduction

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1.1 Operating in countries experiencing fragility, with weak institutions, or emerging from conflict, or confronted with an emergency situation, carries a number of challenges for both the public institutions involved in the design and implementation of projects as much as for funders such as the Asian Development Bank (ADB).

1.2 While ADB has long had procedures in place to process emergency assistance loans in an expedited manner, further progress was needed to expedite procurement in fragile and conflict-affected situations (FCAS) or in emergency situations, in which there is a need to accommodate the challenging local realities. ADB's Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) and Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) address these issues and allow greater differentiation in procurement to respond to country conditions, on projects financed in whole or in part by an ADB loan or grant, or by ADB-administered funds.

1.3 This guidance note<sup>1</sup> elaborates on the section on Procurement in Fragile and Conflict-Affected Situations in the procurement regulations (para. 2.23). Its purpose is not to provide a step-by-step “how-to” guide to processing any and all procurement transactions under projects in either FCAS or emergency situations. By definition, there is no single solution that will successfully address all the different circumstances in any given context.

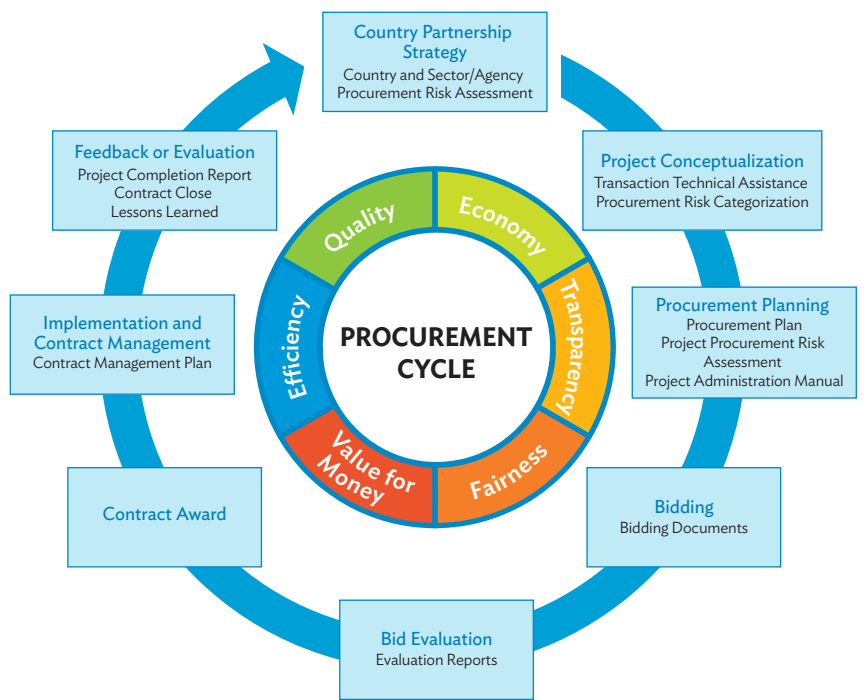
1.4 Rather, the guidance note proposes measures that can facilitate procurement in such situations, and borrowers (including grant recipients) are strongly encouraged to work closely with the assigned ADB project team and procurement specialist to discuss these specific flexibilities and options, as well as any other measures that the situation warrants.

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<sup>1</sup> In the spirit of harmonization, this guidance note draws extensively from: World Bank. 2016. *Bank Guidance: Procurement in Situations of Urgent Need of Assistance or Capacity Constraints*. Washington, DC. It has been adapted to meet the specific needs of ADB in its operations throughout Asia and the Pacific.

1.5      ADB may accept the use of appropriate and particular procurement arrangements in accordance with the relevant provisions of the procurement regulations or other suitable procedures that facilitate more responsive mobilization as required by circumstances. These arrangements may apply across the ADB procurement cycle, described in Figure 1.

**Figure 1: The ADB Procurement Cycle**



Source: Asian Development Bank.

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## II. Fragile, Conflict-Affected, and Emergency Situations in ADB Operations

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### A. Background

2.1 In FCAS and emergency situations, the design and implementation of projects financed in whole or in part by an ADB loan or grant, or by ADB-administered funds, may benefit from special considerations, taking into account the particular circumstances of each country. Similarly, in emergency situations, ADB's internal regulations on its lending and grant operations allow projects to benefit from the provisions on disaster and emergency assistance outlined in the ADB Operations Manual.<sup>2</sup> Notably,

- (i) the normal stages of identification, preparation, and appraisal may be condensed;
- (ii) the decision to authorize negotiations may be taken after a simplified review of a project's documentation; and
- (iii) turnaround times at key stages of processing may be reduced.

2.2 The design of an FCAS or emergency project must reflect the specifics of the borrower's situation as well as the related constraints and risks, to ensure that the project adequately responds to the borrower's needs and that it can achieve its intended results efficiently and with value for money.

2.3 Furthermore, borrowers and ADB project teams must ensure that they "do no harm" and that they develop and implement plans to avoid, minimize, mitigate, or compensate for the potential adverse impacts of assistance projects.<sup>3</sup>

### B. Definitions

2.4 ADB identifies fragile or conflict-affected countries as those of its developing member countries with weak governance, ineffective public administration and rule of law, and civil unrest.<sup>4</sup> It distinguishes between fragility and conflict-affected:

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<sup>2</sup> ADB. 2015. Disaster and Emergency Assistance. *Operations Manual*. OM D7/BP. Manila. <https://www.adb.org/sites/default/files/institutional-document/31483/omdo7-15apr15.pdf>.

<sup>3</sup> ADB. 2009. *Safeguard Policy Statement*. Manila. <https://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf>.

<sup>4</sup> ADB. 2007. *Achieving Development Effectiveness in Weakly Performing Countries: The Asian Development Bank's Approach to Engaging with Weakly Performing Countries*. Manila. <http://www.adb.org/documents/achieving-development-effectiveness-weakly-performing-countries-asian-development-bank-s-a>.

- (i) **Fragility** is a state with weak capacity to carry out the basic functions of governing a population and its territory, that lacks the ability or political will to develop mutually constructive and reinforcing relations with society, or that is affected by other specific vulnerabilities, such as for small states.<sup>5</sup>
- (ii) **Conflict** is a violent or nonviolent process in which two or more parties disagree about interests and values. Although it may provide an opportunity for change, if not managed correctly and peacefully, it can escalate into violence.<sup>6</sup> Conflict can be a cause, symptom, or consequence of fragility. Regardless, a lack of state responsiveness may raise the risk of conflict and the possibility of violence (footnote 5).
- (iii) On the other hand, a **post-conflict country** is one emerging from a violent, protracted conflict (footnote 2).

2.5 FCAS are generally characterized by political instability, weak governance and institutional capacity, economic and social insecurity, high levels of poverty, wide gaps in the level of social and economic services, lack of competition, disputes over access to resources and the sharing of their profits, and greater vulnerability to the effects of natural hazards and climate change. Public service delivery systems seldom function well, and the ability of the government to guarantee the basic security of its people is often limited.<sup>7</sup> Figure 2 describes how situations may exist along a continuum of fragility and conflict, versus resilience and stability.

2.6 ADB identifies disasters and emergency situations (footnote 2) as follows:

- (i) **Disaster** means a sudden, calamitous event that seriously disrupts the functioning of a community or society, causing widespread human, material, economic, or environmental losses that exceed the community's or society's ability to cope using its own resources. Disasters can be caused by natural events,<sup>8</sup> technological or industrial accidents,<sup>9</sup> or conflict.<sup>10</sup>
- (ii) An **emergency** occurs after a natural or anthropogenic disaster, or conflict, when unforeseen circumstances require immediate action, and local capacity is insufficient to address and manage traumatic

<sup>5</sup> See ADB. 2012. *Working Differently in Fragile and Conflict-Affected Situations—The ADB Experience: A Staff Handbook*. Manila. <https://www.adb.org/documents/working-differently-fragile-and-conflict-affected-situations-adb-experience>.

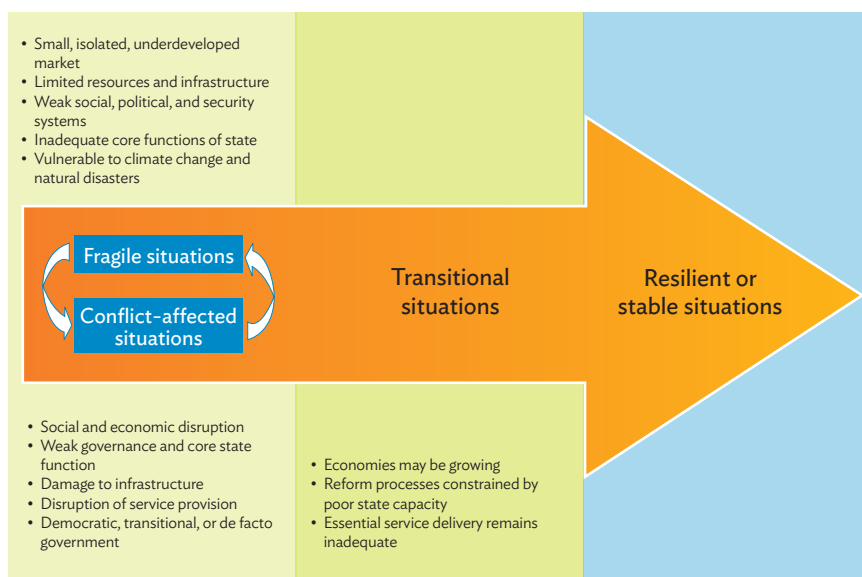
<sup>6</sup> Australian Agency for International Development. 2011. *Framework for Working in Fragile and Conflict-Affected States: Guidance for Staff*. Canberra. <https://dfat.gov.au/about-us/publications/Documents/aid-fragile-conflict-affected-states-staff-guidance.pdf>.

<sup>7</sup> See ADB. 2016. *Mapping Fragile and Conflict-Affected Situations in Asia and the Pacific: The ADB Experience*. Manila. <https://www.adb.org/sites/default/files/publication/211636/mapping-fcas-asia-pacific.pdf>.

<sup>8</sup> Examples are earthquakes, tidal waves, hurricanes, cyclones, volcanic eruptions, flood, droughts, or epidemics.

<sup>9</sup> Examples are explosions, oil spills, nuclear reactor failures, or chemical mishaps.

<sup>10</sup> Examples are regional conflicts, national or civil wars, or widespread community violence.

**Figure 2: Fragility Continuum in Asia and the Pacific**

Source: ADB. 2012. *Working Differently in Fragile and Conflict-Affected Situations—The ADB Experience: A Staff Handbook*. Manila. <https://www.adb.org/documents/working-differently-fragile-and-conflict-affected-situations-adb-experience>. p. 7.

events. Emergencies may involve deaths, injuries, displacement of people, disease, disability, food insecurity, damage or loss of infrastructure, weakened or destroyed public administration, and reduced public safety and security.

2.7 ADB follows an internal process of identifying and declaring developing member countries that are facing FCAS. The list is updated periodically. As of 2017, ADB listed 11 FCAS countries, nine of them fragile and in the Pacific: the Federated States of Micronesia, Kiribati, the Marshall Islands, Nauru, Papua New Guinea, Solomon Islands, Timor-Leste, Tuvalu, and Vanuatu. Two countries were identified as conflict-affected: Afghanistan and Myanmar. Nepal was identified as being in a “transitional” situation, while Mindanao in the Philippines was flagged as a “subnational conflict situation.”<sup>11</sup>

<sup>11</sup> Footnote 7, p. 74. Further guidance on operating in countries categorized as FCAS may be found in ADB. 2014. *Operational Plan for Integrated Disaster Risk Management, 2014–2020*. Manila. <https://www.adb.org/sites/default/files/institutional-document/42764/files/integrated-disaster-risk-management-operational-plan.pdf>; and ADB. 2013. *Operational Plan for Enhancing ADB's Effectiveness in Fragile and Conflict-Affected Situations*. Manila. <https://www.adb.org/documents/operational-plan-enhancing-adb-effectiveness-fragile-and-conflict-affected-situations>.



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## III. Procurement Flexibilities in Fragile, Conflict-Affected, and Emergency Situations

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### A. Project Design and Procurement Planning

3.1 The project strategy outlined in the project documents is based on, in the case of FCAS, detailed assessments of the needs, conditions, and expectations, including the origins and nature of conflicts; and in the case of emergencies, initial damage assessments that can be refined and upgraded over time. The strategy should provide critical policy recommendations for the response to immediate priorities along with accompanying long-term actions.

3.2 Procurement risk assessments are a key instrument used in the preparation of a project strategy. From the country and sector/agency procurement risk assessments that feed into the country partnership strategy, to the project-level procurement risk assessment prepared at the project design stage, all are meant to inform the project strategy and reflect the specific circumstances of a country, sector, or procuring entity that would affect project implementation. The measures of flexibility in procurement discussed in this guidance note are intended to address some of the risks identified in these assessments. See the *Guidance Note on Procurement Risk Framework* for further details on procurement risk assessments.

3.3 While ADB's Safeguard Policy Statement (2009) allows flexibility in processing FCAS projects and emergency assistance, the initial environmental examination, environmental impact assessment, resettlement plan, and/or indigenous people's plan prepared based on the approved frameworks must be formulated and approved by ADB before any project-related physical activity starts.

3.4 The project strategy identifies immediate priority assistance objectives as well as medium-term objectives. These may include

- (i) a proposal for technical assistance and other forms of investment required to meet the stated objectives;
- (ii) an assessment of potential impediments to rapid disbursement, including associated fiduciary risks and proposed mitigation measures;
- (iii) identification of the exceptional measures required to undertake rehabilitation or reconstruction works;
- (iv) an assessment of risks, risk mitigation strategies, and contingency responses; and
- (v) benchmarks and performance monitoring indicators.

3.5 The project implementation arrangements detail the circumstances considered in the preparation of the procurement plan, and include a description of procurement processing, procurement risks, and selection methods. The project's procurement plan must be updated regularly (e.g., on each review mission conducted by the project team), and review mission reports should include a justification for changes to the procurement plan. See the *Guidance Note on Strategic Procurement Planning* for further details on the procurement planning process.

3.6 Some of the things to keep in mind during the design and preparation for projects in FCAS and emergency situations are the following:

- (i) Keep the design of the project administration manual (PAM) and the related procurement plan and packaging short, simple, and fit for purpose.
- (ii) Understand the prevailing political economy, cultural sensitivities, and the severity and geographic spread of any conflict that may affect the country.
- (iii) Understand the supply chain limitations (access to imports, primary inputs, labor, electricity, water supply, banking services, etc.) and constraints to communications, transport, and other logistical factors affecting the country.
- (iv) Assess labor risks and other key social factors, including child labor conditions, and ensure that workers are neither trafficked nor working under forced labor, especially under rapid procurement and contracting.
- (v) Use procurement and selection methods that suit the situation and that will deliver the best outcomes.
- (vi) Consider adaptable project controls, such as levels of prior and post review (sampling), which can be adjusted as capacity improves.
- (vii) Consider using framework agreements where feasible.
- (viii) Consider the need to supplement the capacity of the executing agency in managing and administering contracts, e.g., with consultant support.
- (ix) Consider relying on other institutions with operations in the country, such as United Nations (UN) agencies, other multilateral development banks, donors, civil society organizations (CSOs), etc.
- (x) Enable communities to participate in the design and subsequent implementation of works.

## B. Procurement Preparedness

3.7 Procurement is an essential component of emergency, conflict, and disaster preparedness and response. Various measures can be taken before an emergency, conflict, or disaster occurs to optimize the capacity of procurement systems to respond effectively to the situation. The measures outlined below are essential to address the challenges to procurement preparedness in any such situation.

3.8 Emergency procurement preparedness involves actions taken in advance of an emergency that will enhance the capacity of authorities to address the situation. The list of actions that follows, grouped into four categories, is not exhaustive, but gives an idea of the considerations involved:

- (i) **Legal and Institutional Infrastructure for Emergency Response**
  - (a) Integration of procurement into national disaster preparedness and risk reduction plans
  - (b) Establishment of a governance structure and legal framework that governs the application of emergency procedures
  - (c) Setting up of emergency procurement teams, pooling the most skilled experts
  - (d) Setting up of emergency contract or supply chain management teams
  - (e) Capacity building for undertaking emergency procurement, including due diligence checks in preselecting contractors, suppliers, and consultants
  - (f) Use of framework agreements for faster deployment of resources
- (ii) **Allocation of Resources for Emergency Procurement Facilities and Teams**
  - (a) Office space
  - (b) Communications and connectivity equipment
  - (c) Storage and distribution facilities
  - (d) Transportation resources, including local firms for in-country transportation of people and cargo
  - (e) Publicly-accessible free website to ensure wide dissemination of information
  - (f) Reserve budget for the work of the emergency procurement team
- (iii) **Development of Emergency Procurement Procedures and Tools**
  - (a) Legal framework that authorizes and specifies special procedures for emergency situations (e.g., use of direct selection, force account, framework agreements, etc.)
  - (b) Use of electronic procurement and related processes
  - (c) Adapted prequalification procedures
  - (d) Standard emergency forms of contracts, requisition forms, and reporting formats
  - (e) Principles and procedures applicable to cost reimbursements
  - (f) Asset tracking procedures

**(iv) Readiness for Contractor and Supplier Mobilization**

- (a) Identification of frequently required emergency goods and services, related suppliers, and estimated costs (e.g., for temporary shelter, water, food/nutritional supplements, communication equipment, vehicles, medical supplies, etc.)
- (b) Establishment and periodic updating of a list of prequalified suppliers, contractors, and service providers
- (c) Assessment of countrywide (as well as region-wide, where relevant) markets for common supplies needed in case of emergency
- (d) Framework agreements for consulting services, goods, supplies, and works developed and used for emergency situations
- (e) Prepositioning of supplies and establishment of linkages with other humanitarian organizations' depots
- (f) Standby contracts with prequalified suppliers, contractors, and service providers

**C. Situational Response**

3.9 The ADB Operations Manual, Disaster and Emergency Assistance section (footnote 2) allows for a broad spectrum of response measures in emergency situations, in terms of financing and simplified procedures for project processing and implementation.

3.10 For FCAS and emergencies, ADB's 2017 procurement regulations also allow for greater flexibility in designing and conducting procurement. Below is a list of measures that can be adopted in consultation with borrowers and other development partners:

- (i) Fiduciary arrangements normally required during the preparation period may be deferred to the implementation stage. For example, the finalization of the PAM may be postponed and the procurement plan pushed back to after project start-up, and a simplified PAM and initial procurement plan may be used in project processing documents.
- (ii) Procurement may be conducted using the borrower's national procurement arrangements, provided that these are acceptable to ADB and consistent with ADB's core procurement principles.
- (iii) Where no viable implementation capacity or alternative exists, ADB may, at the request of the borrower, execute start-up activities on behalf of the borrower. For example, under a loan or grant project, ADB may select the project implementation support consultant who will assist the borrower with the implementation of the project, including in the conduct of further procurement activities.
- (iv) The Director General of ADB's Procurement, Portfolio and Financial Management Department may provisionally increase the delegation thresholds granted to procurement staff so they are fully empowered to act and provide clearances in a timely manner.

3.11 The Appendix lists measures that may, at the request of the borrower, be considered and put into place to answer the particular challenges of FCAS and emergencies.

## **D. Application of ADB Regulations and Procedures during Emergencies**

3.12 During the immediate response and recovery phase of an emergency or conflict, ADB may accept the use of the borrower's national procurement arrangements, provided that these procedures are consistent with ADB's core procurement principles and ADB's Anticorruption Policy (1998, as amended to date) and Integrity Principles and Guidelines (2015, as amended from time to time).

3.13 Normally, ADB's prior review will not be required during the immediate response phase of an emergency, since available time is limited. Prior review should only be used in exceptional cases and responses will be provided promptly. ADB's oversight of procurement may be enhanced through increased implementation support and/or increased post review (sampling).

## **E. Operational Context and Market Conditions**

3.14 The supply market and local market conditions should be assessed periodically. Refer to the *Guidance Note on Strategic Procurement Planning* for further details.

3.15 Although periodic market assessments may be undertaken for FCAS countries, it may be necessary to conduct an update of local conditions, especially in the aftermath of an emergency event. This can be achieved quickly through informal, ad hoc surveys and by involving local authorities, communities, workers, workers' representatives, CSOs, groups of people with disabilities, and businesses in the affected areas. ADB resident missions could also assist in this exercise.

3.16 In addition to market assessments, the following aspects may also be considered when preparing the procurement plan of projects in FCAS and emergency situations.

### **1. Security Requirements in the Country**

3.17 Each country will present different security issues that have an impact on procurement processes and the performance of contracts. Security considerations are often reflected in the prices quoted for goods, works, and services. To ensure greater transparency and more realistic pricing, the cost of security should be identified as a separate line item in contracts to facilitate and manage the impact on cost if the security situation in the country changes during contract implementation.

## 2. Contracting Core Government Services to External Providers

3.18 Contracting core government services to external providers may be an option when local government is recovering from conflict and, as a result, has little or no capacity to deliver essential public services or functions, e.g., on public financial management, legislative drafting, treasury reform, management of health services, private sector development, management of state-owned enterprises, etc.

3.19 The contracting out of these services is a possible short-term solution; however, there are potential political and technical risks associated with this approach that need to be considered at the project appraisal stage. Contracting for these services should be subject to appropriate procurement procedures to ensure that quality services are contracted.

## 3. Governance

3.20 There is an inherently high risk that procurement in FCAS and emergency operations could be affected by conflicts of interest or by fraudulent or corrupt activities of some of the stakeholders involved in the procurement process. Also, the likelihood of complications, cost overruns, delays, and poor quality of goods and services may be very high due to capacity constraints, urgency, and general disorder.

3.21 Developing a sound governance and anticorruption plan for the project is a key consideration to help mitigate those risks. In small states, conflict of interest is often an issue and appropriate mitigation measures must be designed to address such situations. Results of project procurement-related reviews (PPRRs) conducted by ADB's Office of Anticorruption and Integrity (OAI) in FCAS countries should be considered in identifying and assessing these integrity risks.<sup>12</sup> In the event that integrity concerns are identified, the project team should consult OAI<sup>13</sup> to help assess and determine if these integrity risks are deemed significant.

## F. Organizational and Institutional Support

3.22 Any development assistance project must be supported by sufficient attention to the borrower's organizational and institutional arrangements for implementation, including for procurement. Measures that can be considered for FCAS and emergencies include the following:

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<sup>12</sup> PPRRs assess project integrity risks by identifying signs of integrity violations through (i) examination of processes, procedures, and documentation related to procurement, financial management, and contract management; and (ii) inspection of project outputs. OAI recommends enhancements to mitigate or eliminate opportunities for integrity violations. As of 2018, OAI has conducted PPRRs in four FCAS countries: Afghanistan, Myanmar, Papua New Guinea, and Timor-Leste.

<sup>13</sup> OAI may be reached through e-mail: [integrity@adb.org](mailto:integrity@adb.org).

- (i) **Within the country.** Rapid and appropriate assistance requires ADB to work in a flexible and pragmatic way with other institutions.
  - (a) In countries with weak implementation capacity, ADB may consider a request from the borrower to contract other institutions such as nongovernment organizations (NGOs) and CSOs, UN agencies, or other multilateral or bilateral institutions to undertake all or part of project implementation, including the procurement functions.
  - (b) Use of the alternative procurement arrangements of another multilateral or bilateral agency or organization involved in the project, or accredited agency of the borrower, should be considered during project design in accordance with section XII of the 2017 procurement policy. In such cases, ADB may agree to rely on and apply the procurement rules and procedures of the agency or organization and may agree to such party taking a lead role in providing implementation support and monitoring of procurement activities.
- (ii) **Within ADB.** ADB procedures and regulations provide several options that support the timely processing of transactions in particularly urgent or compelling circumstances. For example, in FCAS and emergencies, ADB may provide direct assistance to the borrower by:
  - (a) financing individual consultants to support the borrower in project implementation, including procurement;
  - (b) drafting procurement documents;
  - (c) handling the selection of consultants on behalf of the borrower;
  - (d) assisting in the identification of strengths and weaknesses in bids or proposals; and
  - (e) acting as observer in contract negotiations or in dialogues between the borrower and its consultants, contractors, or suppliers.

3.23 In any event, the ultimate responsibility for procurement remains with the borrower, and direct assistance by ADB must never result in ADB entering into contracts on behalf of the borrower.

## G. Use of Procurement Agents

3.24 When the borrower does not have the required in-house capacity for the necessary procurement or project management activities, hiring a procurement agent or project management consultant may be the most efficient option. The procurement agent should be selected in accordance with para. 2.24 of the 2017 procurement regulations.

## H. Flexible Arrangements for Procurement

3.25 In FCAS and emergencies, the selection methods, selection arrangements, and market approaches used to procure goods, works, and services should be simplified, consistent with the provisions of the 2017 procurement regulations. Below are some measures for consideration.

### 1. Approach to National versus International Markets

3.26 Bidding procedures targeting the national market using the borrower's own procurement rules and procedures may be used when the procedures for international advertising are considered inappropriate or too complex due to the borrower's weak implementation capacity, where there is clearly no international market appetite to participate in the procurement process, or when speed is of the essence.

### 2. Flexible Arrangements for the Selection of Consultants

3.27 **Direct selection.** Direct selection of consulting firms and individuals (paras. 2.17 and 2.18 of the procurement regulations) should be used if it presents a clear advantage over competition for the required consulting services. Firms that are already working in the country and have a proven track record in similar assignments may be the most suitable option for start-up activities. Consultants selected on a direct selection basis may be given the opportunity to participate in future assignments under the same project, provided there is no unresolved conflict of interest with the tasks performed under the initial contract.

3.28 **Framework agreements,** as described in paras. 2.8 and 2.9 of the procurement regulations, may be appropriate for the procurement of consulting services in emergency situations or for crisis planning, such as for natural disasters. Such framework agreements may be existing borrower agreements to be used in ADB operations, or they may be established by the borrower specifically for the ADB project.<sup>14</sup>

3.29 **Using a “pool of experts”** or a list of “preselected” consulting firms or individual experts may also be considered appropriate to support borrowers at various steps of project implementation, including procurement processing as well as preparation of terms of reference, shortlists, and requests for proposals.

### 3. Flexible Arrangements for Procurement of Goods, Works, and Nonconsulting Services

3.30 **Direct selection.** Direct selection for contracts for goods, works, and nonconsulting services may be used to extend an existing contract or to award new contracts in response to disasters or emergencies. For such contracting to

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<sup>14</sup> For further details, refer to the *Guidance Note on Framework Agreements for Consulting Services*.



be justified, ADB should be satisfied that the price is reasonable and that no significant benefit could be derived from further competition. Contractors and suppliers selected under projects financed by other development partners may also be considered for direct selection under an ADB-financed emergency project. The direct selection may be from the private sector, UN agencies, suppliers, contractors, or NGOs that are already mobilized and working in the emergency areas.

3.31 **Framework agreements** may be appropriate for the procurement of goods, works, and services in emergency situations or for crisis planning (such as for natural disasters). Such framework agreements may be existing borrower agreements to be used in ADB operations, or they may be established by the borrower specifically for the ADB project.

3.32 **Request for quotations.** Request for quotations (RFQ) (paras. 2.10–2.13 of the procurement regulations) is a competitive method based on comparison of prices obtained from firms for the provision of goods, works, or services that are generally of low value, low risk, not complex, and can be specified through simple requirements. This method may be appropriate to procure limited quantities of readily available, off-the-shelf goods or services, standard specification commodities, or simple civil works of small value, when it is more efficient than using more competitive methods of procurement.

3.33 Quotations should be obtained through advertisement, or when limited competition is justified, through an RFQ to a limited number of firms. To ensure competition, the borrower should request quotations from as many firms as possible to allow comparison of normally at least three responsive quotations. In situations where less than three suppliers or contractors are available (or when less than three responsive quotations are received), the borrower should note the situation in the procurement records and proceed with the award of contract. There is no requirement for the borrower to obtain a no-objection from ADB when there are fewer than three quotations; however, those RFQ contracts may be prioritized for ADB's post review (sampling).

3.34 Firms must be given sufficient time to prepare and submit their quotations. RFQs must include the description and quantity for the works, goods, or services, including any installation requirements as appropriate. The request must also indicate the deadline for submission of quotations and specify whether quotations are accepted by letter, facsimile, or other electronic means. The evaluation of quotations and contract award is carried out based on the criteria specified in the RFQ. The terms of the accepted quotation must be incorporated in a contractually binding document. The borrower must keep records of all proceedings regarding RFQs.

3.35 In emergency situations, the RFQ method can also be used even for higher-value contracts; the justification should be noted in the PAM or procurement records as appropriate. Such contracts may be prioritized for post review (sampling).

**3.36 Simplification of pre- and post-qualification criteria.** The pre- and post-qualification criteria should be set to optimize the participation of local or regional contractors and suppliers and may, therefore, be based on the conditions that prevail in the local and regional markets.

**3.37 Prequalified suppliers and contractors.** Using lists of prequalified suppliers and contractors to whom periodic invitations are issued can also help accelerate the procurement process. Prequalification documents may use a simplified format that is acceptable to ADB. Suppliers and contractors are then asked to provide quotations for simple, common items such as commodities. Contracts should be awarded on a competitive basis, and may be for multiyear durations, with provisions on price escalation whenever justified, and the possibility of extension upon mutual agreement between the client and the supplier or contractor.

**3.38 Community participation.** The active participation of local communities in disaster, emergency, post-disaster, or post-conflict situations, in the identification and design of immediate relief efforts will ensure that their most urgent needs will be met. Their contribution to the oversight of procurement or to the execution of works contracts, and their own implementation of small works and related remuneration through various means, either in-kind or through cash transfers, can engage the communities onto the path of faster recovery and actively contribute to the immediate improvement of their living conditions.

**3.39 Force account.** In FCAS and emergencies, including in small-state situations, when construction firms are unlikely to bid at reasonable prices because of the location of and risks associated with the project, or when a certain government agency has the sole right to operate in certain sectors (e.g., railway works, high tension transmission cables, etc.), force account for repair or reconstruction using the borrower's own personnel and equipment, or a government-owned construction unit, may be the only practical method (para. 2.19 of the procurement regulations). This assumes that the borrower has sufficient managerial capacity and possesses the required technical and financial controls to report to ADB on expenditures.

**3.40 Use of secondhand goods.** In FCAS and emergencies, in exceptional circumstances, ADB may finance the procurement of secondhand goods (e.g., capital plant and equipment, vessels, vehicles, etc.), when they are considered to provide the most economical and efficient means of satisfying the objectives of the project.

**3.41** A procurement package for goods shall not mix secondhand goods with new goods. The technical requirements/specifications should describe the minimum characteristics of the items that could be offered secondhand, i.e., age and condition (e.g., refurbished, like new, or showing normal wear and tear).

3.42 Simplified bidding documents should set out (i) clear specifications that provide acceptable standards, (ii) performance requirements of the goods to be procured, (iii) clear criteria on how bids will be evaluated, and (iv) inspection requirements and requirements for assessment and certification of the residual life of the goods by recognized licensed entities.

3.43 The warranty and defect liability provisions in the contract shall be written or adapted to apply to secondhand goods. Any risk mitigation measure that may be necessary in relation to the procurement and use of secondhand goods must be reflected in the procurement plan.

3.44 **Commodities.** In FCAS, the most efficient way of procuring commodities such as seeds, grain, cereals, cooking oil, and fertilizers may be through specialized agencies, such as the UN or others, or directly from the private sector. In countries where customs duties for emergency commodities are abnormally high, the borrower may be asked to waive or to reduce customs duties to bring them to a reasonable level (e.g., 10% to 12%).<sup>15</sup> In emergency situations, priority commodities must be determined in response to the basic needs resulting from the event, in particular, the needs of the poorest people. Pre-shipment inspection for commodities is normally required.

3.45 **Accelerated bid or proposal preparation times.** Bid or proposal preparation periods during the immediate response and recovery phases of an emergency may be reduced to 15 working days for international competition and 7 working days for national competition. Shorter periods must be approved by ADB, taking into consideration the capacity of firms (local and international) to prepare responsive bids within a short period.

3.46 **Bid security and performance security requirements.** For small contracts for goods or works, the preparation of bids by small and medium-sized suppliers or contractors can be accelerated by not requiring a bid security (set out in Appendix 3, para. 27 of the 2017 procurement regulations). Instead, the borrower may require bidders to sign a declaration (set out in Appendix 3, para. 28 of the procurement regulations) accepting that, if they withdraw or modify their bid during the period of validity or when they are awarded the contract, or if they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents, the bidder will be suspended from bidding for any contract with the entity that invited bids, for the period of time specified in the bidding document. Similarly, in the case of small contracts for works or supply of goods, the borrower may decide to not require a performance security. However, in works contracts, the borrower may retain the retention money during the defects liability period, and in contracts for goods, will request the manufacturer warranties.

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<sup>15</sup> For example, if customs duties for the imports of nutritional commodities in a particular country were set at 90%, quick-disbursing funds to finance nutritional commodities should be conditional on the temporary waiver or reduction of customs duties that have negative effects on the poorest people.

3.47 **Advance payment.** Where it is not easy for contractors, suppliers, or service providers to obtain lines of credit from banks, the borrower may consider increasing the amount of advance payment under works or supply contracts, provided that the contractor, supplier, or service provider provides a bank guarantee for the same amount. In some environments, the only contractors, suppliers, or service providers willing to execute a contract may not be able to obtain bank guarantees for the advance payment. In such cases, the borrower must provide a situational analysis and provide options along with appropriate risk mitigation measures. For example, contracts with CSOs, NGOs, and other institutions with track records of good performance may be offered the payment of an appropriate amount of advance without being required to provide a bank guarantee.

3.48 **Fiduciary oversight.** In general, in rapid response situations, there is an increased risk of fraud and corruption, particularly in the use of simplified procurement procedures, less complex due diligence, false delivery certification, inflated invoices, theft of goods or commodities, and poor quality of materials and services procured or delivered for the project. The capacity of national institutions in these circumstances is often weak and post-conflict political economies are often prone to corruption; thus, contractual terms and conditions may not be observed or applied. Mitigating such risks normally includes oversight by ADB in close coordination with the borrower's oversight agencies, to ensure appropriate scope, design, speed, supervision, and controls of the operations. Project teams involved in the preparation of FCAS operations may consider using some of the following measures:

- (i) **Consider involving an external consultant**, (e.g., private sector firm, procurement agent, CSO, NGO, UN agency) as management consultant to the borrower to assist with the selection, contract negotiations, and contract management of suppliers, contractors, and consultants in situations where the possibility of corruption is high.
- (ii) **Take a sequenced approach** in emergency programs that allows low-risk components and activities to move ahead, while necessary assessments are done for activities that represent higher risks.
- (iii) **Lower post review (sampling) thresholds for small states.** Depending on the risk assessment of the executing agency, the reliability of the project management entity, and the particular risks associated with the capacity of the borrower in a small state, ADB may consider applying lower post review (sampling) thresholds than those normally applied to projects in the same sector in other countries.
- (iv) **No prior review requirement in the immediate response and recovery phases of emergency and conflict situations.** In such cases, ADB oversight is done through post review (sampling), project monitoring missions, or even independent procurement review.

- (v) **Use a monitoring and/or procurement agent**, who will provide fiduciary assurance to ADB and the borrower by prescreening procurement documents and the award of major contracts, and will bring issues of concern to the attention of ADB and the borrower for quick resolution. Procurement agents may also be given the responsibility to handle procurement on the borrower's behalf, in accordance with the procurement procedures set out in the loan agreement and elaborated in the procurement plan approved by ADB.
- (vi) **Use information technology**, such as smartphones, geotagging, and satellite imagery for verification in hard-to-reach sites.
- (vii) **Provide for pre-shipment inspection** and local independent verification at delivery, to ensure the qualitative and quantitative compliance of the execution of contracts for goods. When a procurement agent is hired to support the borrower, the related terms of reference may include management of inspection and acceptance of delivery.
- (viii) **Intensify ADB supervision** to address and mitigate the increased risks associated with emergency operations. This may be accomplished by more frequent monitoring missions involving a procurement specialist and/or constant supervision by ADB staff in-country.

3.49 **Specialist procurement support.** Recognizing that procurement support to an operation in FCAS and emergencies will expectedly be more demanding, additional support can be sought from ADB procurement staff based at the ADB resident mission in the region, if there is one, or based at ADB headquarters.

# Appendix: Flexibility Measures Available in Fragile, Conflict-Affected, and Emergency Situations

Measure	Operation Situation	
	Emergency Response	Recovery, Reconstruction, Post-Conflict, or Fragile Situation
<b>Flexibility on Eligibility: Country of Origin</b>	<b>May be waived</b> With approval from ADB's Board of Directors	<b>Regional experts used as “national” experts</b> Where local capacity is poor or insufficient
<b>Special Procurement Arrangements</b>	<b>Yes</b> Simplified procurement arrangements allowed, including community participation and the use of the borrower's national procurement procedures acceptable to ADB	<b>Yes</b> Simplified procurement arrangements allowed, including the use of the borrower's national procurement procedures acceptable to ADB
<b>PAM and Procurement Plan</b>	<b>Use Simplified Template</b> Completion of PAM and full procurement plan may be deferred to project implementation	In accordance with normal practices
<b>Risk Assessment</b>	<b>Quick and simple</b>	Country-level risk assessment can be regional
<b>Allowance for Split Packaging</b>	<b>Yes</b> To broaden pool of qualified local contractors or suppliers	<b>Yes</b> To broaden pool of qualified local contractors or suppliers
<b>ADB Processing of Start-Up Activities</b> (Consulting Services)	<b>Yes</b> Upon written request from borrower	<b>Yes</b> Upon written request from borrower
<b>Increased Approval Threshold for Procurement Staff</b>	<b>Yes</b> Granted by the Director General, Procurement, Portfolio and Financial Management Department	<b>No</b>
<b>Flexibility in Review Thresholds</b>	<b>Normally no prior review</b>	Based on local conditions

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Table continued

Measure	Operation Situation	
	Emergency Response	Recovery, Reconstruction, Post-Conflict, or Fragile Situation
<b>Flexible Use of Direct Selection</b>	<b>Yes, as appropriate</b> Normally without prior review	In accordance with normal practices
<b>Use of Framework Agreements</b>	<b>Yes, encouraged</b>	<b>Yes, encouraged</b>
<b>Use of Other Entities to Support Implementation</b>	<b>Yes</b> e.g., entities with operations in the area, CSOs and NGOs, UN agencies	<b>Yes</b> Especially entities familiar with the context or country, CSOs and NGOs, UN agencies, community participation Consultants (firms or individuals) to support implementation
<b>Use of Procurement Agents, Including Contract Management Support</b>	<b>Yes</b> Especially when large-volume procurement involved	<b>Yes</b> Especially when large or complex works involved
<b>Use of Force Account</b>	<b>Yes</b> Especially when government has onsite resources	In accordance with normal practices
<b>Use of Request for Quotations (Shopping)</b>	<b>Yes</b> Without pre-imposed ceiling, adapted to circumstances	In accordance with normal practices
<b>Procurement of Secondhand Goods, Leasing, and Renting</b>	<b>Yes</b>	In accordance with normal practices
<b>Enhanced Use of Local Advertising</b>	<b>Yes, given the urgency</b>	In accordance with local conditions
<b>Flexible Time for Bid or Proposal Preparation</b>	<b>Expected to be shortened</b>	In accordance with normal practices
<b>Lower Bidder Qualification Requirements</b>	<b>Yes</b>	<b>Yes</b>
<b>Bid Security</b>	<b>Not mandatory</b> Use of bid securing declaration acceptable	<b>Not mandatory</b> Use of bid securing declaration acceptable

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Table continued

Measure	Operation Situation	
	Emergency Response	Recovery, Reconstruction, Post-Conflict, or Fragile Situation
<b>Waiver of Performance Security</b>	<b>Yes</b> For goods and small works	<b>Yes</b> For goods and small works
<b>Increase in Amount of Advance Payment</b>	<b>Can be increased</b>	<b>Can be increased</b>
<b>Waiver of Advance Payment Security</b>	<b>Yes</b> For low-value contracts and contracts with reputable contractors or suppliers	<b>No</b>
<b>Use of Alternative Forms of Contracting</b>	<b>Yes</b> Increased use of lump sum and output-based contracts is recommended. Consider also using framework agreements (for repeat orders, assignments, or works), community participation, fee-based contracting, etc.	<b>Yes</b> Encouraged

ADB = Asian Development Bank, CSO = civil society organization, NGO = nongovernment organization, PAM = project administration manual, UN = United Nations.

Source: Asian Development Bank.



# **Fragile, Conflict-Affected, and Emergency Situations**

## *Guidance Note on Procurement*

Operating in fragile and conflict-affected situations, and in the context of an emergency, carries enormous challenges. The nature and capacity of local industries, the capacity of local public administrations, and the usual stringent requirements imposed on contractors, suppliers, and service providers, all require careful adjustments for procurement to be efficient. ADB's 2017 procurement framework provides the opportunity to differentiate procurement approaches according to country conditions. Therefore, this guidance note offers procurement practitioners on projects financed in whole or in part by an ADB loan or grant, or by ADB-administered funds, simplified and flexible procurement measures to respond adequately to the challenges of procurement in fragile, conflict-affected, and emergency situations.

## **About the Asian Development Bank**

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to a large share of the world's poor. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.



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